IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7049 OF 2004

Sarla Polyester Limited — Petitioner

vs.

1. Union of India & anr. — Respondents

Mr.S.A. Divan along with Mr.Prakash Shah i/b. M/s.DSK Legal for the petitioner.

Mr.S.S. Pakale along with Mr.Y.R. Mishra i/b. Mr.T.C. Kaushik for respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ

DATED : 2nd September 2004

P.C.

Heard.

2. Rule. Returnable forthwith.

3. Advocate on record for respondents waives service.

4. Looking to the controversy involved in the writ petition, rule is treated to be on board for hearing and disposed of by this order.

5. The petitioner is a company registered under the Companies Act, 1956 and is engaged in the manufacture of synthetic yarn. For the purpose of manufacture, the petitioner has its factory at Unit-I, survey no.59/1/4

and Unit-II, survey no.64/2/3/4, Amli, Piparia Industrial Estate, Piparia, Silvassa. The warehousing licence for Unit I was granted on 18th November 1994 and renewed from time to time and the warehousing for Unit II was granted to the petitioner on 14th November 2003. By order dated 20th August 2004 the Assistant Commissioner of Central Excise, Division-II, Silvassa has suspended the warehousing licences granted to the petitioner. It is this order which is impugned in the present writ petition.

6. Interalia the contention of the learned counsel for the petitioner is that no inquiry for cancellation of the said licences granted to the petitioner is pending under clause (b) of subsection (2) of Section 58 of the Customs Act, 1962 and, therefore, the order suspending the said licences under subsection (3) of Section 58 is without jurisdiction.

7. Section 58 of the Customs Act, 1962 reads thus:

> "**58. Licensing of Private warehouses.-** (1) At any warehousing station, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may license private warehouses wherein dutiable goods imported by or on behalf of the licensee, or any other imported goods in respect of which facilities for deposit in a public warehouse are not available, may be deposited.
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> (2) The Assistant Commissioner of Customs or Deputy Commissioner of Customs may cancel a

licence granted under subsection (1) -

(a) by giving one month's notice in writing to the licensee; or

(b) if the licensee has contravened any provision of this Act or the rules or regulations or committed breach of any of the conditions of the licence:

Provided that before any licence is cancelled under clause (b), the licensee shall be given a reasonable opportunity of being heard.

(3) Pending an enquiry whether a licence granted under sub-section (1) should be cancelled under clause (b) of sub-section (2), the Assistant Commissioner of Customs or Deputy Commissioner of Customs may suspend the licence."

8. Sub-section (1) of Section 58 provides for licence of private warehouses by the Assistant Commissioner of Customs or Deputy Commissioner of Customs. Under clause (a) of sub-section (2) the licence granted under sub-section (1) of Section 58 may be cancelled by giving one month's notice in writing to the licensee. Under clause (b) of sub-section (2) if the licensee has contravened any provisions of the Customs Act, 1962 or the rules or regulations framed thereunder or committed breach of any of the conditions of the licence, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, after giving an opportunity of hearing to the licensee, may cancel the licence. Sub-section (3) provides that pending an enquiry for cancellation of licence under clause (b) of sub-section (2), the Assistant Commissioner of Customs or Deputy Commissioner

of Customs may suspend the licence. The power conferred to the authority under subsection (3) to suspend the licence granted under sub-section (1) is exercisable pending an enquiry under sub-section (2)(b) of Section 58. Though, in the impugned order of suspension various contraventions by the licensee are alleged but the said order does not reflect that any enquiry for cancellation of licences granted to the petitioner has commenced under sub-section (2)(b) of Section 58. In the reply affidavit filed by the respondents it is not the case that the enquiry for cancellation of licences granted to the petitioner under sub-section (1) of Section 58 has commenced or is pending. To our specific query, whether any enquiry under sub-section (2) (b) of Section 58 for cancellation of licences granted to the petitioner under sub-section (1) of Section 58 has commenced or is pending, the learned counsel for the revenue submitted that so far no such enquiry has commenced. If that be so, we are afraid, the order of suspension of the warehousing licences granted under sub-section (1) of Section 58 cannot be sustained. The learned counsel for the revenue could not satisfy us that without initiation of any enquiry under sub-section (2)(b) for cancellation of licences, the licences granted under sub-section (1) of Section 58 could have been suspended under sub-section (3) of Section 58.

9. In what we have observed above, the impugned order of suspension dated 20th August 2004 has to be set aside.

10. The writ petition, accordingly, succeeds. The order of suspension dated 20th August 2004 is set aside. However, it is clarified that the concerned authority is not precluded in taking appropriate action against the petitioner in accordance with law under sub-section (2)(b) of Section 58 of the Customs Act, 1962 and in that event it will be open to him to pass fresh order under subsection (3) of Section 58 as well. The contentions of the petitioner are kept open to be agitated in subsequent proceedings, if necessary.

11. No costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)